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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CINDY ROMO,

Plaintiff,

v.

MERCEDES-BENZ USA, LLC and
DOES 1-10, inclusive,

Defendants.

Case No.: 8:23-cv-794

[Orange County Superior Court Case No.
30-2023-01316173-CU-BC-CJC]

**DEFENDANT MERCEDES-BENZ
USA, LLC'S, NOTICE OF
REMOVAL OF ACTION UNDER 28
U.S.C. §§ 1332, 1441 & 1446;
DECLARATION OF SASHA BASSI**

Complaint Filed: March 28, 2023

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendant Mercedes-Benz USA, LLC ("MBUSA"), by its undersigned attorneys, hereby removes the above-captioned civil action, and all claims and causes of action therein, from the Superior Court of California, County of Orange, to the United States District Court for the Central District of California. Defendant MBUSA states as follows:

Jurisdiction and Authority for Removal

1) On March 28, 2023, an action was commenced by Plaintiff CINDY ROMO, ("Plaintiff") against Defendant MBUSA in the Superior Court of the State of California for the County of Orange, entitled "CINDY ROMO, an individual, v. MERCEDES-BENZ USA, LLC, A Delaware Limited Liability Company; and DOES 1 through 10, inclusive"

1 (“State Court Case”), Case No. 30-2023-01316173-CU-BC-CJC. (Declaration of SASHA
2 BASSI (“Bassi Decl.” ¶ 2.)

3 2) The summons and Complaint were served on MBUSA on April 5, 2023. (*Id.*
4 ¶ 3.) This removal is therefore timely under 28 U.S.C. §1446(b). Attached hereto as
5 **Exhibit A** are all the documents served on the removing Defendant MBUSA in the State
6 Court Case, including a copy of the conformed State Court Case Complaint.

7 3) The Central District of California encompasses Orange County. Venue is
8 appropriate based on the fact that this action was filed in Orange County and based on the
9 allegations in the Complaint in the State Court Case.

10 4) This Court has complete diversity jurisdiction over this action. For diversity
11 purposes, a natural person is a "citizen" of the state which he or she is domiciled. *Kantor*
12 *v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 20 1090 (9th Cir. 1983). A natural person's
13 domicile is the place he or she resides with the intention to remain or to which he or she
14 intends to return. *Kanter v. Warner-Lambert Co.*, 265 F.3d. 853, 857 (9th Cir. 2001).

15 5) Plaintiff, at the time this action was commenced, is and still is a citizen of
16 the State of California. (Bassi Decl. ¶ 5.)

17 6) Defendant MBUSA, at the time this action was commenced, was and still is a
18 limited liability company. The citizenship of a limited liability company for diversity
19 purposes is determined by examining the citizenship of each member of the company.
20 *Johnson v. Columbia Properties. Anchorage, LP*, 437 F.3d 894, 899-900 (9th Cir. 2006);
21 *Rolling Greens MHP, L.P. v. Comcast SCH Holdings, LLC*, 374 F.3d 1020, 1021-22 (11th
22 Cir. 2004). A member of a limited liability company is a person who has been admitted to
23 a limited liability company as a member. *See* Cal. Corp. Code, § 17701.02(p); 6 Del. Code,
24 § 18-101(11).

25 7) MBUSA is the only named Defendant in this action. (Exhibit A, Complaint.)
26 Defendant MBUSA, at the time this action was commenced, was and still is a limited
27 liability company organized under the laws of the State of Delaware, with its principal
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place of business in the State of Georgia, and was not and is not organized under the laws of the State of California, wherein this action was brought. (Bassi Decl. ¶ 4; **Exhibit C**.) The sole member of MBUSA is Daimler North America Corporation (“DNAC”). DNAC is a Corporation organized under the laws of the State of Delaware with its principal place of business in Farmington Hills, Michigan. (*Id.*) Neither MBUSA nor its sole member is a citizen of the State of California. (*Id.*)

8) Complete diversity therefore existed as of the time the action was commenced in state Court and exists at the time of removal. There are no other named defendants that can defeat diversity. “Doe” defendants may be ignored for removal purposes. *See Salveson v. Western State Bank Card Assn.*, 731 F.2d 1423 (9th Cir. 1984).

9) Plaintiff’s entire Complaint arises under the Song-Beverly Consumer Warranty Act. Plaintiff alleges that Plaintiff purchased the vehicle, a 2020 Mercedes-Benz GLE 350W, having VIN No.: 4JGFB4JB5LA246550. (Exhibit A, Complaint ¶ 4.)

10) Plaintiff is seeking replacement or restitution, including the entire price paid or payable for the subject vehicle, incidental and consequential damages, a civil penalty in an amount not to exceed two times the amount of Plaintiff’s actual damages pursuant to California Civil Code section 1794 subdivision (c), along with attorneys’ fees, and costs of suit. (Exhibit A, Complaint ¶ 17, 19, 20, 21, 22, p. 4:1-12 (“Prayer for Relief”). **Exhibit B** to the Declaration of Sasha Bassi demonstrates that the trade-in value for a base model 2020 Mercedes-Benz GLE 350W in “Fair” condition with standard equipment, with 100 miles on the odometer, and in the Orange County market is \$51,765.00. (Exhibit B to Bassi Decl.) The trade-in value of a vehicle is lower than what a vehicle would be sold for to a consumer. (Bassi Decl. ¶ 3.) The amount in controversy requirement may be established by showing that such damages are “facially apparent” from the Plaintiff’s Complaint, or by setting forth facts in the notice of removal that support a finding of the requisite amount. *See Lockett v. Delta Airlines, Inc.*, 171 F.3d 295, 298 (5th Cir. 1999).

11) Civil penalties under the Song-Beverly Act are properly included in the

1 amount in controversy. *Brady v. Mercedes Benz*, 243 F. Supp. 2d 1004, 1009 (N.D. Cal.
2 2002); *See also Chabner v. United of Omaha Life Ins. Co.*, 225 F.3d 1042, 1046, n.3 (9th
3 Cir. 2000) (civil penalties under Cal. Civ. Code§ 52, subd. (a) and punitive damages are
4 included in the amount in controversy). “[W]hen a defendant seeks federal-court
5 adjudication, the defendant's amount-in-controversy allegation should be accepted when
6 not contested by the plaintiff or questioned by the court.” *Dart Cherokee Basin Operating*
7 *Co. v. Owens*, 135 S.Ct. 547, 553 (2014). Additionally, Plaintiff seeks incidental and
8 consequential damages. Plaintiff’s civil penalty claim requests a penalty equal to up to
9 double the amount of the paid or payable damages and incidental and consequential
10 damages. Therefore, the potential liability to MBUSA in this action, assuming a maximum
11 civil penalty award but without any consideration of claimed incidental or consequential
12 damages, and accounting for any buyout of the vehicle is **\$155,295.00**. The amount in
13 controversy of \$75,000.00 is met.

14 12) Typically, attorneys’ fees are not considered part of the amount in controversy
15 for diversity purposes. *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-56 (9th
16 Cir.1998). However, where an underlying statute, such as the Song-Beverly Act, authorizes
17 an award of attorneys' fees, such fees may be included in calculating the amount in
18 controversy. *See Id.*; *Morrison v. Allstate Indem. Co.*, 228 F.3d 1255, 1265 (11th Cir.2000).
19 Further, the amount in controversy is an estimate of the amount in dispute, rather than an
20 assessment of the defendant's potential liability. *Lewis v. Verizon Commc'ns, Inc.*, 627 F.3d
21 395, 400 (9th Cir. 2010). Once the party seeking federal jurisdiction provides plausible
22 explanation for how the amount in controversy is met, the matter should remain in federal
23 Court unless plaintiff cannot possibly recover that amount. *Spivey v. Vertrue, Inc.*, 528 F.3d
24 982, 986 (7th Cir. 2008). Additionally, the *Brady* Court also agreed with the line of cases
25 that held that a reasonable estimate of fees likely to be recovered may be used in calculating
26 the amount in controversy. *See Miera v. Dairyland Ins. Co.*, 143 F.3d 1337, 1340 (10th
27 Cir.1998); *Simmons v. PCR Technology*, 209 F.Supp.2d 1029, 1034-35 (N.D.Cal.2002);
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1 *Gerig v. Krause Publications, Inc.*, 58 F.Supp.2d 1261, 1265 (D.Kan.1999); *Plus System,*
2 *Inc. v. New England Network, Inc.*, 804 F.Supp. 111, 116-17 (D.Colo.1992). A reasonable
3 estimate of attorneys' fees is also properly included. (*Id.* at 1010-1011.) Fee awards in
4 Song-Beverly cases may be substantial, even in cases that are settled without trial. *See,*
5 e.g., *Goglin v. BMW of N. Am., LLC*, 4 Cal.App.5th 462, 470 (2016) (\$185,214.19 fee);
6 *Gezalyan v. Mercedes-Benz USA, LLC*, 697 F.Supp.2d 1168, 1171 (C.D. Cal. 2010)
7 (\$50,404.34 fee).

8 **Notice to Plaintiff and the Superior Court of Removal of the Civil Action**

9 13) Defendant MBUSA will promptly serve a copy of this Notice of Removal on
10 counsel for Plaintiff and all parties and will file a copy of this Notice of Removal with the
11 Clerk of the Superior Court of California for the County of Orange pursuant to 28 U.S.C.
12 § 1446(d).

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14 Dated: May 5, 2023

THETA LAW FIRM, LLP

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17 SASHA BASSI

18 Attorney for Defendant Mercedes-Benz USA, LLC
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DECLARATION OF SASHA BASSI

I, SASHA BASSI, declare as follows:

1. I am an associate in the law firm of Theta Law Firm, LLP, attorneys of record for Defendant Mercedes-Benz USA, LLC (“MBUSA”). This declaration is offered in support of MBUSA’s Notice of Removal to the United States District Court for the Central District of California under 28 U.S.C. § 1332, 1441 and 1446. If called as a witness, I could and would competently testify under oath to the following facts of which I have personal knowledge.

2. On March 28, 2023, an action was commenced by Plaintiff CINDY ROMO, (“Plaintiff”) against Defendant MBUSA in the Superior Court of the State of California for the County of Orange, entitled “CINDY ROMO, an individual, v. MERCEDES-BENZ USA, LLC, a limited liability company, and DOES 1 through 10, inclusive” (“State Court Case”), Case No. 30-2023-01316173-CU-BC-CJC. The summons and Complaint were served on MBUSA on April 5, 2023. A true and correct copy of all the documents served on Defendant MBUSA in this action are attached hereto as **Exhibit A**, which includes the Summons and Complaint.

3. On May 5, 2023, I went to Kelly Blue Book’s (“KBB”) website and found the trade-in value for a base model 2020 Mercedes-Benz GLE 350W, with the standard options in “Fair” condition. Specifically, as set forth in Exhibit B, a Fair Condition Vehicle is classified as follows:

Fair Condition - 20% of all cars we value. This car has some mechanical or cosmetic defects and needs servicing, but is still in safe running condition and has a clean title history. The paint, body and/or interior may need professional servicing. The tires may need replacing and there may be some repairable rust damage.

I also input the miles of the vehicle as 100 miles since the Complaint does not allege that the vehicle was purchased and used 92604 as the zip code for the Riverside County market whereas the file materials demonstrate that is the zip code of the selling dealership.

1 Based on KBB, and as set forth in Exhibit B, the trade-in value for a base model 2019
2 Mercedes-Benz CLS450 in the “Fair” condition with standard equipment in the Riverside
3 market is \$51,765.00. The trade-in value of a vehicle is lower than what a vehicle would
4 be sold for to a consumer. The website that I accessed was the following:
5 <https://www.kbb.com/whats-my-car-worth/> and I accessed this website at approximately
6 6:50 p.m. on May 5, 2023. Attached hereto as **Exhibit B** is a true and correct copy of the
7 vehicle valuation that I obtained from KBB’s website.

8 4. Defendant MBUSA, at the time this action was commenced, was and still is a limited
9 liability company organized under the laws of the State of Delaware, with its principal
10 place of business in the State of Georgia, and was not and is not organized under the laws
11 of the State of California, wherein this action was brought. The sole member of MBUSA
12 is Daimler North America Corporation (“DNAC”). DNAC is a Corporation organized
13 under the laws of the State of Delaware with its principal place of business in Farmington
14 Hills, Michigan. Neither MBUSA nor its sole member is a citizen of the State of California.
15 Attached as **Exhibit C** is a true and correct copy of MBUSA’s Statement of Information.

16 5. My review of the file materials shows Plaintiff resides in San Bernardino County in
17 the State of California. The file materials also demonstrate the vehicle was presented for
18 service and repairs by Plaintiff at Walter’s Mercedes-Benz of Riverside, located within
19 Riverside County in the State of California.

20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct.

22 Executed on May 5, 2023 at Lawndale, California.

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26 _____
SASHA BASSI

PROOF OF SERVICE
(FRCP 4(l); Code Civ. Proc., § 1013a(3) Revised 5-1-88)

I am over the age of 18, not a party to this action, and employed in the county where this mailing occurred. My business address is 15901 Hawthorne Blvd., Suite 270, Lawndale, CA 90260. My Eservice address is: eservice@thetafirm.com. On **May 5, 2023**, I served the following documents described as **DEFENDANT MERCEDES-BENZ USA, LLC'S, NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. §§ 1332, 1441 & 1446; DECLARATION OF SASHA BASSI**, on interested parties in this action by placing original/true copies thereof in sealed envelopes addressed as follows:

NEALE & FHIMA APC ARRON D. FHIMA, ESQ. GABRIELLE M. DIAMSE, ESQ. 34188 Pacific Coast Highway Dana Point, CA 92629 Telephone: (949) 661-1007 Fax.: (949) 661-3619 CindieIanni@nealefhima.com aaron@nealefhima.com gabriellediamse@nealefhima.com	
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☐ **BY MAIL:** I deposited such envelope in the mail at Lawndale, California. The envelope was mailed with proper postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Said mailing is deposited with the United States Postal Service on that same day in the ordinary course of business and there is delivery service by United States mail at the place so addressed. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **BY PERSONAL SERVICE:** I delivered such envelope by hand to the individual(s) listed on the above service list.

☒ **BY ELECTRONIC TRANSMISSION:** I caused to be electronically transmitted such document referenced above to the individual(s) listed on the above service list.

☐ **BY FACSIMILE TRANSMISSION:** I transmitted the facsimile to the individual(s) listed on the above service list at the facsimile number listed thereon. The telephone number on the facsimile machine I used is (424) 286-2244. The facsimile machine I used complied with Rule 2.306 and no error was reported by the machine. Pursuant to Rule 2.306, I caused the machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

☐ **BY OVERNIGHT DELIVERY:** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the person at the above-address. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **May 5, 2023** at Lawndale, California.

/s/ Steve Correa

Steve Correa